

STATE OF MICHIGAN
COURT OF APPEALS

PAUL STECKER and HEIDI STECKER,
Individually and as Trustees of the HEIDI
STECKER LIVING TRUST,

UNPUBLISHED
January 13, 2009

Plaintiffs-Appellees,

v

BROAD STREET SECURITIES, INC.,

No. 283698
Saginaw Circuit Court
LC No. 07-065598-CK

Defendant-Appellant.

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order that denied its motion to set aside the default judgment in favor of plaintiffs. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends the trial court lacked jurisdiction over the dispute because the parties had entered into an arbitration agreement. Hence, defendant claims it was not required to file an answer to plaintiffs' complaint and, therefore, the court abused its discretion in denying its motion to set aside the default judgment. We disagree.

"This Court reviews interpretation of court rules de novo as a question of law." *In re Gosnell*, 234 Mich App 326, 333; 594 NW2d 90 (1999).

Two essential elements are generally required for a trial court to set a properly entered default aside. MCR 2.603(D)(1). The first is good cause and the second is "an affidavit of facts showing a meritorious defense is filed." *Id.* But these requirements do not apply if the court does not have "jurisdiction over the defendant." *Id.* Good cause is established by (1) a procedural irregularity or defect, (2) a reasonable excuse for not complying with the requirements that created the default, or (3) some other reason showing that manifest injustice would result if the default judgment is not set aside. *Alken-Zeigler Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999).

Jurisdiction over a defendant may be based on his specific acts or contacts with the forum state. *Electrolines, Inc v Prudential Assurance Co Ltd*, 260 Mich App 144, 166; 677 NW2d 874 (2003). The record establishes that this matter arose out of a dispute between defendant and its

clients who live in Michigan. Therefore, defendant had contact with the state of Michigan in relation to the circumstances underlying this case. Those contacts provided the trial court with jurisdiction over the dispute.¹

Further, defendant argues that it showed good cause for not timely answering plaintiffs' complaint by alleging that plaintiffs would receive a windfall from the default because they could not prove any damages. Defendant's argument does not show a procedural irregularity or a reasonable excuse for not answering plaintiffs' complaint. The record shows that notice was served on defendant and that it eventually answered the complaint, one month late with no excuse for the delay. Thus, defendant did not show good cause for setting aside the default.

Moreover, defendant failed to file an affidavit of meritorious defense with its motion to set aside the default. MCR 2.603(D)(1).

Second, defendant contends that the court clerk improperly entered the default judgment pursuant to MCR 2.603(B)(2) because plaintiffs' damage amount was not for a sum certain. Defendant did not raise this challenge below, so it is not preserved for appellate review. We review unpreserved issues for plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MCR 2.603 is straightforward and unambiguous. When applying for a default judgment to be entered by the clerk, the clerk may enter the judgment if, either the plaintiff's claim is "for a sum certain, *or for a sum that can by computation be made certain*". MCR 2.603(B)(2)(a) (emphasis added).

Defendant argues a sum certain did not exist because plaintiffs supplied three different figures as to their damages. Defendant fails to address the second part of the rule that allows the court clerk to enter judgment if a sum by computation can be made certain. MCR 2.603(B)(2)(a). Thus, defendant has not met his burden of showing plain error. See *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006).

In any event, plaintiffs' damages are based on a simple calculation—the amount of unauthorized shares of stock sold by defendant multiplied by the stock price. The stock price can fluctuate every day, which explains any differences in the values of the damage amounts. An amount could be determined for certain on the day the judgment was requested and consequently could be fixed and settled. Therefore, the court clerk properly entered the default

¹ Contrary to defendant's position, the existence of a valid arbitration agreement as to a claim did not deprive the trial court of *subject matter jurisdiction* over the claim. *Campbell v St John Hosp*, 434 Mich 608, 612-615; 455 NW2d 695 (1990) (emphasis added).

judgment based on a determination of “a sum that can by computation be made certain.” MCR 2.603(B)(2)(a).

Affirmed.

/s/ Brian K. Zahra

/s/ Peter D. O’Connell

/s/ Karen M. Fort Hood